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C 13119-1-2

EXAMINER

RIVELL, J

ART UNIT

PAPER NUMBER

10

3407

DATE MAILED:

11/25/92

RICHARD L. HUGHES  
TOWNSEND & TOWNSEND  
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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined

☒ Responsive to communication filed on

6/22/92  
7/24/92

☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 7 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.           | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. (2) | 4. <input type="checkbox"/> Notice of informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.    | 6. <input type="checkbox"/>  |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-13 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 1-13 are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Art Unit 3407

This action is in response to the filing of a preliminary amendment and Petition to change inventorship under 37 C.F.R. § 1.48(c) filed July 24, 1992. A First Office Action dated August 6, 1992 (paper #6) was issued without consideration of the Petition and amendment due to these papers crossing in the mail. Thus the action on the merits of August 6, 1992 is hereby WITHDRAWN. The Notice re Patent Drawing (PTO-948) and the prior art cited (PTO-892) sent with the action <sup>Are</sup> ~~NOT~~ withdrawn and remains applicable. All time periods will be reset to run from the date of this action. The delay in responding is regretted.

Claims 10-13 have been added. Thus an action on the merits of claims 1-13 is as follows.

In view of the papers filed July 24, 1992, it has been found that this application, as filed, through error and without any deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 C.F.R. § 1.48. The inventorship of this application has been changed by the addition of Richard D. Fields to the inventive entity. This change will be made after mailing of this action.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the

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date of application for patent in the United States.

Claims 1, 3, 5, 7, 10 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Rand. In Rand, as assembled, threads 36 allow for relative movement between the "conduit" first (32, left or right) and second (32, right or left) portion to "permit" a change in flow direction.

Claims 1, 3, 4, 5, 7, 10 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Cla-Val catalog. In the catalog, on the page describing the features of the device, the pictures show a back flow device fluidly connected piping. Each device is connected by flanges and bolts to the adjacent device. The bolt and flange type connection permits relative movement of the "conduit" first and second section to change the outlet flow direction.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same

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person.

Claims 2, 6, 8 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Rand or the Cla-Val catalog in view of Della. Both Rand and the Cla-Val catalog disclose all the claimed features but each lack having the relative movement of the conduit allowed by cutting the conduit and then coupled back together. The patent to Della discloses a conduit which includes "annular flats" adjacent a weakened portion, which weakened portion is severed to allow for relative movement of first and second portions of the conduit. The conduit is then coupled together after severing. This apparatus allows the user to allow for and/or readjust to plumbing requirements in terms of length and/or readjust to plumbing requirements in terms of length and/or direction. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ a <sup>A</sup>weakened portion in the device of Rand or Cla-Val, severable and reconnected by coupling, for the purpose of accommodating plumbing requirements as recognized by Della.

Claims 9 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 5,107,888 in view of Rand or the Cla-Val catalog. The device of the patented claim includes all the claimed feature but lacks having the "housing reconfigurable" to change the direction of the outlet flow path.

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Both Rand and the Cla-Val catalog disclose that it is known in the art of plural serial check valves to employ housing connections between valves which will permit relative movement of housing sections to allow for a change in the outflow direction. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ a housing including connections of portions of the housing which allow relative movement of the housing portions for the purpose of allowing a change in the out flow direction as recognized by Rand or Cla-Val.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to John Rivell at telephone number (703) 308-2599.

J. RIVELL:th  
November 24, 1992

JOHN RIVELL *JK*  
PRIMARY EXAMINER  
ART UNIT 347